IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2311 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASANTLAL RATILAL JASANI - Petitioner(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner
MR LR PUJARI, AGP for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/12/2006

ORAL JUDGMENT

1. Shri H.P.Raval, learned counsel for the petitioner, Shri L.R. Pujari, learned AGP for the State. Heard.

2. By the present petition under Article 226/227 of the Constitution of India, the petitioner seeks to challenge the order dated 1.3.88 passed by the State Government, rejecting the petitioner's application filed under Section 20 of the Urban Land [Ceiling & Regulation] Act, 1976 on the ground that the land in dispute was belonging to 13 persons, there were no good reasons for refusing the permission. It is submitted that in the present matter, proceedings under Section 10[3] of the Act were not drawn and as the petitioner was never dispossessed, the proceedings against the petitioner would stand abated and he would be entitled to retain possession of the total area of the land in dispute admeasuring 8 acres and 28 gunthas.

3. The facts necessary for proper appreciation of the dispute are that the land in dispute was purchased by as many as 13 persons as joint owners. Raghav Unadkat, who was one of the co-owner submitted a form under Section 6 of the Act and pleaded before the Competent Authority that the land in dispute was jointly owned by 13

persons and as each of them had some share in the property, the land could not be declared to be beyond the ceiling limit or in excess of the authority to hold. It is to be seen that the present petitioner and some other co-owners also filed their returns under Section 6 and stated that they were entitled to retain possession of the property, being the co-owners. The petitioner, thereafter made an application under Section 20 and therefore further proceedings beyond Section 10[2] of the Act were not taken against him, however, the proceedings against Raghavji Unadkat continued. The authorities, after finding that the said Raghavji Unadkat was holding the land beyond the ceiling limits, proceeded under Section 10 of the Act. Sections 10[1] and 10[2] of the Act which are material for the present case read as under:-

> *10.Acquisition of vacant land in excess of ceiling limit.-[1] As soon as may be after the service of the statement under Sec.9 on the person concerned the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that--*

> *[i] such vacant land is to be acquired by the concerned State Government and*
> *[ii] the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interest in such land,*
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> *to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.*
> *[2] After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section [1], the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.*

4. From these provisions, it would clearly appear that after service of the statement under Section-9 on the person concerned, the competent authority is required to issue a notification giving particulars of the vacant land held by such person in excess of the ceiling limit stating that such vacant land is to be acquired by the State, the authority has also to invite the claims of the persons interested in such vacant land.

5. It is not the case of the present petitioner that in case of Raghavji Unadkat, proceedings under Section 10[1] were not drawn.

6. Section 10[1] of the Act clearly provides that on publication of such notification or issuance of the public notification, persons interested in the property are required to file their objections. In the present case, the present petitioner, namely, Vasantlal Ratilal Jasani did not file his objections in the matter pending against Raghavji Unadkat. He allowed the case to go by default.

7. It must not be forgotten that Raghavji Unadkat was contending that he was one of the joint owner and the present petitioner, in his return filed by him was also contending that he was joint owner. Under the circumstances, the petitioner was required to appear in the matter which was processed against Raghavji Unadkat and was also obliged to file his objection.

8. Section 2[i] of the Act defines “person”. The definition is inclusive and says that “person” includes an individual, a family, a firm, a company or an association or body of individuals whether incorporated or not. Undisputely, 13 persons under the provisions of the law would be

treated to be an association or body of individuals and would fall within the mischief of “person”. In case like present, where notice is issued to one of the member of the association or body of individuals, it would be deemed to be a notice to all. One cannot say that each member is required to be issued notice. In the present case, number of the members of the association had filed their independent returns, but they did not ask the authority that as the claim of each of them is identical, all the proceedings be jointly decided, each of them was playing his own drum and was not ready to join the proceedings which were taken against other member of their own association.

9. True it is that the petitioner's application came to be rejected on 1.3.88, but unfortunately in the meanwhile final orders were passed in the matter of Raghavji Unadkat and the proceedings went by default. A notice dated 13.8.87 was sent to Raghavji Unadkat, he was required to surrender possession, but as he did not

surrender the possession, he was dispossessed on 19.5.88.

10. According to the petitioner, as no proceedings were drawn against him nor he was dispossessed, he is deemed to be in possession and in view of the authoritative pronouncements of this Court, so long as the challenge to application under Section 20 survives, the authority would not be entitled to draw proceedings under Section 10[3] of the Act.

11. The argument on legal principles certainly would be just and valid, but in the present state of facts, the argument would not be palatable. In the present case, one of the member of the association had suffered final order and it is not known to anybody that the said order made against Raghavji Unadkat was ever challenged by anyone. It would lead to incongruous situation if this Court holds that though proceedings drawn against Raghavji Unadkat had attained finality, but the said proceedings would not affect the present petitioner and he would be entitled to hold possession. Present is a case

where on issuance of a notice under Section 10[1], an opportunity was provided to the petitioner to join the issue and forestall the proceedings in the case of Raghavji Unadkat, but unfortunately the petitioner was not interested in joining the said proceedings. Said Raghavji Unadkat was not dispossessed in his individual capacity, but he was dispossessed as representative of association of persons. From the definition as quoted above, it would clearly appear that definition of “person” would include association of persons. In the present matter, if one member of the association was present and the other members were not joining the issue nor were challenging the authority of the said person, he would represent the interest of the association of persons. It would be too late now to say that the orders passed against Raghavji Unadkat would not affect the petitioner and dispossession of Raghavji Unadkat would not adversely affect the rights of the petitioner.

12. Though the learned counsel for the petitioner had taken me through the definitions of

"agricultural land" as provided under Section 2[o] and the definition of "vacant and" as provided under Section 2[q], but in my opinion, the same are not required to be considered nor the issue that, the land being agricultural land would not be falling within the mischief of "vacant land" is required to be decided, because, the proceedings against one of the member have attained finality.

13. From the order of the Division Bench made in these very proceedings, it would clearly appear that the State Government was all through contending that the petitioner was not in possession and as such, the proceedings would not abate. Division Bench required the Deputy Secretary, Urban Land Ceiling, Rajkot to visit the site and submit the status report. The Additional Collector, Coordination and Competent Authority, ULC, visited the site and submitted his report clearly stating in his report that he visited the site on 10.12.2005 and found that the land in dispute was divided in several plots out of which 785 plots were handed over to

individuals, that is, members of the weaker sections of the society and only 37 plots out of the same were kept open by the allottees, while others have made construction of dwelling units. From that report, it would clearly appear that not only the petitioner did not remain in possession, but after taking possession of the property from one of the co-owner/joint owner, the State Government developed number of the plots and allotted as many as 785 plots to members of the weaker sections of the society.

14. The petitioner's writ application could certainly be allowed if there was no change in the nature and status of the property. At this stage, it would be difficult to say that action by the authorities against Raghavji Unadkat would not bind the petitioner. If Raghavji Unadkat was dispossessed and it is not known to anybody that what further steps have been taken by him, then the petitioner claiming very same interest in the property cannot be allowed to say that the order passed against the interest of Raghavji Unadkat would not bind him. It has

also to be recorded that the petitioner, being member of the association of persons has made application under Section 20 of the Act seeking exemption for the entire land. If on one hand, he represents the association of persons, then he cannot be allowed to say that the order passed against one member of the association would not bind other members of the association or body of persons. Taking the case from any angle, I am unable to hold that the petitioner is entitled to any relief.

15. So far as the merits of the case are concerned, at such late stage, when the petitioner has lost his possession, the property has been developed into plots, plots have already been allotted to members belonging to weaker sections of the society who have raised their dwelling units, grant of application under Section 20 would not be legal and equitable. Taking into consideration the entirety of the facts and the legal provisions, I am unable to grant any relief in favour of the petitioner. The petition deserves to and is accordingly dismissed. Rule

is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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